

The logo of Galgotias University is a stylized 'G' composed of three curved, overlapping bands in shades of yellow, blue, and red, set against a light grey circular background.

Copyright and its Relevance in Indian Entertainment Sector

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Topics Covered

Unit- 2: Evolution of copyright law in the context of films

- Development of Copyright Law in context of films Industry
- Copyright and its Relevance in Indian Entertainment Sector
- Entertainment Industry in the Regime of Internet
- Copyright Act 1957: The subject matter of Protection in Film Industry
- Stages of Protection of Films under the Copyright Law
- Pre- Production Stage
- Post- Production Stage

Copyright and its Relevance in Indian Entertainment Sector

Introduction

- The film industry in India has become a global enterprise, producing the highest number of films annually. Films are the most important source of entertainment which unlike painting or writing a novel cannot be done individually.
- A film is an amalgamation of the efforts of a plethora of people involving the music director, the director of photography, the art director, stunt men, the choreographer, spot boys, the makeup artists and last but not the least, the Captain of the ship the director and the actors.

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Entertainment Industry in the Regime of Internet

- With the advent of the Internet, YouTube, Torrents and other such platforms, today's audience are exposed to latest technologies and film making styles from across the globe, thereby resulting in their expectations soaring to new heights.
- With the increasing number of films being produced every year, marketing spends have increased exponentially and films are promoted on many platforms.
- With the involvement of big corporate houses like Reliance, UTV, Sun, Fox Network in the film industry, the budget of the Indian films have sky rocketed and the films are getting a far wider exposure in global markets.

Copyright Act 1957: The subject matter of Protection in Film Industry

However, despite the enormous budgets and involvement of corporate, the ways of working of the film industry and the legal implications here are quite different from those of other industries. Even today, a lot of work in the film industry is done purely through word of mouth, or is done internally within the various unions that reside in the industry. And all of this is being done with little involvement of proper legal systems. Therefore, the laws with regard to films are still at a nascent stage and are yet to be refined.

Having said that, it is important to recognize that given the intangible nature of films such as script, storyline etc, it is imperative to understand the legal frameworks by which the creators or producers of films can protect their work from being plagiarized. In this day and time, the producer of a film, being the person who takes the initiative and responsibility to make the film, is considered as the owner of the film. Hence, the burden to protect the film also lies mainly in the hands of the producer or the production house.

Copyright Act 1957: The subject matter of Protection in Film Industry

The most important Act with respect to film protection today is the Indian *Copyright Act, (1957)*.

- Under the Copyright Act, 1957, copyright subsists in original literary, dramatic, musical and artistic works; cinematograph films; and sound recording. (Section 13 (1))
- According to Section 13 of the Copyright Act, 1957, “subsistence of the copyright has taken place in the following work;
- a) *Original literary, dramatic, musical and artistic works*
- b) *Cinematograph films; and*
- c) *Sound recordings.*
- Section 13(1) (a) protects original work whereas Sections 13(1)(b) and (c) protect derivative works. It provides for the field specified therein and for commercial manifestation of original work.
- In *Star India Pvt. Ltd. V. Piyush Agarwal*, the Court stated that though the definition of ‘work’ in Section 2(y) did not include the performer’s right, however, it had necessarily to be read with Section 38 which provided for a performer to have a copyright in his performance and therefore performance was a work in which copyright was created under the Act.

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Stages of Protection of Films under the Copyright Law

- Protection of a *film today can be broadly divided into two stages:*
- Protection during the *Pre-production stage* and protection during the Post-Production stage. Pre-production comprises the work done in preparation for the film's production, including scripting, screenplay, hiring of cast and crew, shoot schedule, location hunting, rehearsals etc and this is where there is a need for a very strict set of laws and legal protection. Pre-production is considered as the foundation of the film. Once these are protected, the protection of the film becomes considerably easier.
- Once the production of the film is complete, the *post production protection* will come into play.

Pre- Production Stage

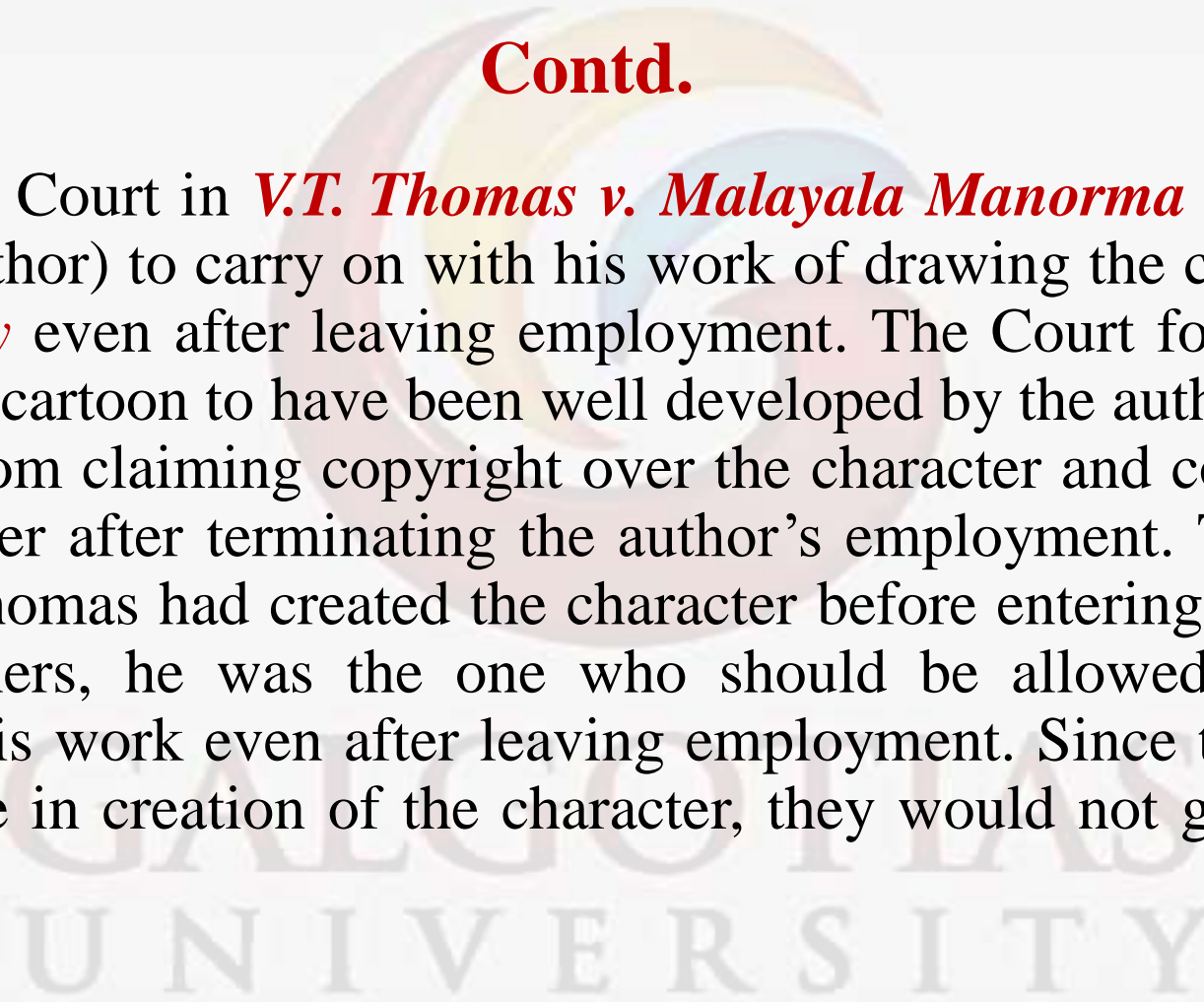
- The first and the foremost thing *during the pre-production stage* would be to enter into strong agreements between the makers of the movie and the various parties involved in the making of the film, laying down the right and duties of each of the parties.
- Some of the most important agreements that are advisable to be executed is with the :
 - *actors,*
 - *agreements relating to promotion and distribution,*
 - *agreements with the music composers,*
 - *agreements relating to the merchandising of the products,*
 - *co-production agreements,*
 - *Theatrical and other distribution rights agreements,*
 - *agreements relating to international distribution, and*
 - *right to broadcast and telecast the film and*
 - *finally the protection and conveyance of intellectual property rights,* such as copyrights, performer's rights, trademarks, assignment of copyrights etc.

Subject matter of copyright protection: Pre-Production Stage

- During the production of the film there are various aspects to a film which needs to be protected. The following aspects of a film can be protected under the Copyrights Act.
- **Literary Work:** This includes any work which is expressed in printing or writing. With respect to a film, this will include the storyline, script, dialogues, lyrics, computer graphics, animations etc.
- In *R.G. Anand v. Delux Films*, the Supreme Court held that there could be no **copyright in an idea**, subject-matter, themes, plots or historical or legendry facts and violation of the copyright in such cases was confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.
- **Artistic work:** This includes a painting, sculpture, drawing or any such work which possesses artistic quality. In a film, this translates to a background set, costumes, structures built for the making of the film etc. If these costumes, sets, designs etc can be put in paper in the form of a written work or a drawing, these can be protected under the Act.

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- The Kerala High Court in *V.T. Thomas v. Malayala Manorma Col. Ltd.* allowed V.T. Thomas (author) to carry on with his work of drawing the characters in *Toms Boban* and *Molly* even after leaving employment. The Court found the character and image in the cartoon to have been well developed by the author and prohibited the publishers from claiming copyright over the character and continuing to draw the same character after terminating the author's employment. The Court opined that since Mr. Thomas had created the character before entering into employment with the publishers, he was the one who should be allowed to carry on the exploitation of his work even after leaving employment. Since the publishers did not play any role in creation of the character, they would not get copyright over the character.

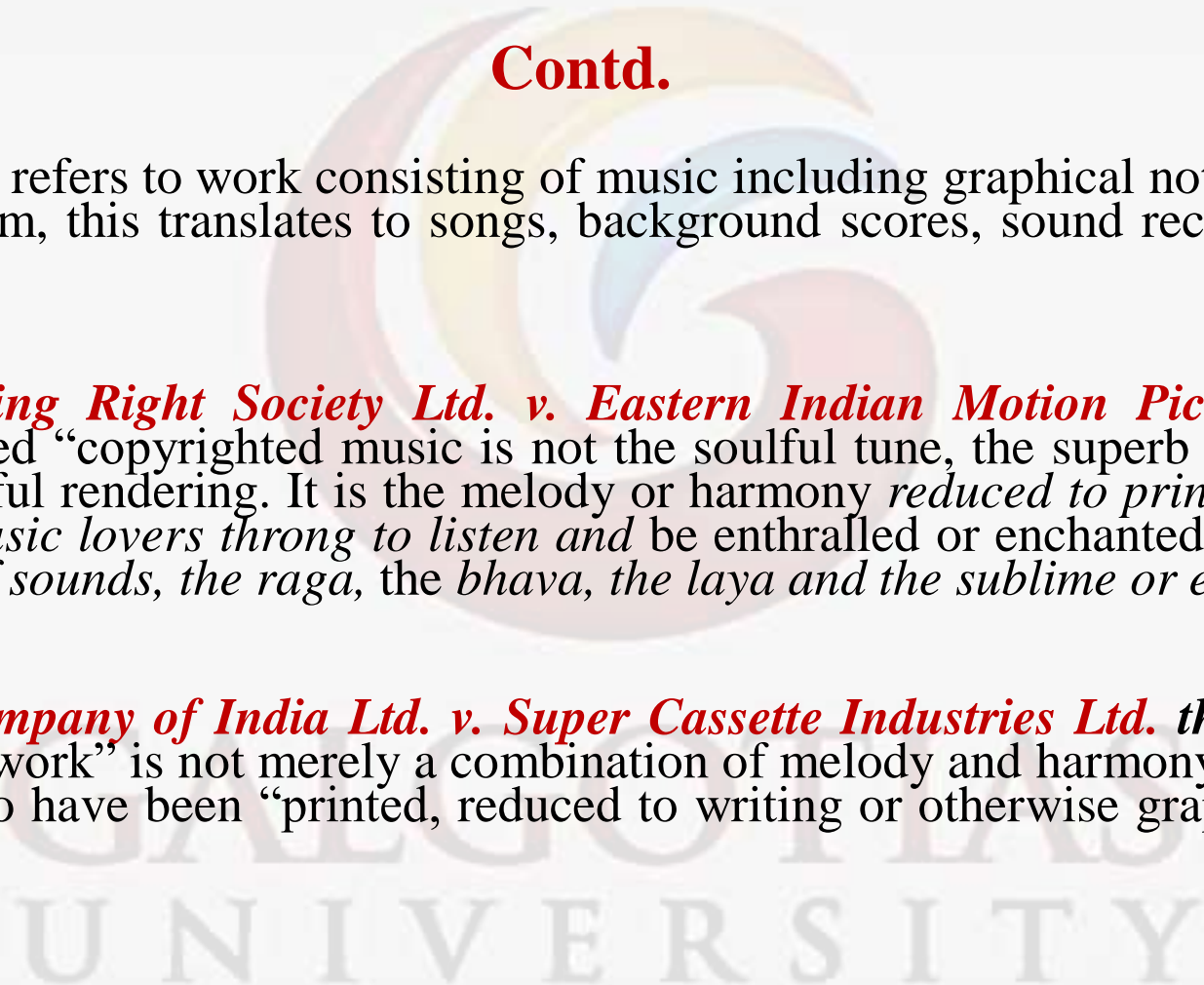


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- **Dramatic work:** These includes any recitation or choreographic work. With respect to a film, this refers to any dance movements, stunts, etc. Again, these when put into writing in a paper can be protected under the Act.
- In, *Institute for Inner Studies v. Charlotte Anderson*,²¹the Delhi High Court stated that for a work to be called as a dramatic work, the “work has to be the one which is capable of physically performed or accompanied by action. The other requirement for a work to be called as dramatic work is fixation of the matter in the form of writing or otherwise which means certainty of incidents as a predetermined plan. Where there exists a reasonable doubt as to complete certainty of the performance of the work in the manner conceived by the author or writer, in such cases, the work falls short of the requirement of fixation or certainty of the performance and therefore cannot be called as dramatic work. Such instances of doubtful nature of certainty include sport games, news presentations, aerobics and by necessary implication also include other exercises, daily routines, Yoga and Pranic Healing techniques.....it can be said that prima facie the Asansas of Yoga or Pranic Healing do not fall within the ambit of the dramatic work.”

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- **Musical work:** This refers to work consisting of music including graphical notation of such works. With respect to a film, this translates to songs, background scores, sound recording, theme music etc.
- In *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Assn.*, Justice Krishna Iyer observed “copyrighted music is not the soulful tune, the superb singing, the glorious voice or the wonderful rendering. It is the melody or harmony *reduced to print, writing or graphic form. The Indian music lovers throng to listen and be enthralled or enchanted by th nada brahma, the sweet concord of sounds, the raga, the bhava, the laya and the sublime or existing singing.*”
- In *Gramophone Company of India Ltd. v. Super Cassette Industries Ltd. the Delhi* High Court observed: “Musical work” is not merely a combination of melody and harmony or either of them. It must necessarily also have been “printed, reduced to writing or otherwise graphically produced or reproduced”.



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- **Sound recording:** This refers to the combination of the lyrics, song, music which is present in the cinematograph film. Each of the above mentioned aspects can be individually protected under the Copyrights Act. However, when they converge to form a Cinematographic film, the producer or the production house will become the owner of the Cinematograph film and the Copyrights associated with the film. So, in this case, the production house or the producer need not protect each of the individual aspects. The fact that the Cinematographic film is protected would imply that each of the individual aspects is also protected. Hence, the lyricist or music director for instance, may not have a right over their contribution to the film unless otherwise specifically stated in the agreement made prior to the production stage. However, strangely it is recognised that the work of an actor/actress in a cinematograph is not protected under the Act.

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Subject matter of copyright protection: Post-Production Stage

- As a cinematographic film, there are certain rights that are associated with the owner of a Copyright *in the post-production stage*:
- **Reproduction Rights:** This right entitles the copyright owner the complete ownership over the film and no person shall make one or more copies of this work, including the sounds and sound recordings, without the permission of the copyright owner.
- **Distribution and Rental rights:** This is the right enjoyed by the Copyright owner where-in he enjoys the exclusive right over the initial distribution of the copies of the work. Rental rights are a very recent addition to the bundle of rights for a cinematographic film. Rental rights refer to making available for the public or persons or establishment hiring the film, for a limited period of time the use of the film. However, the rental rights is a very restricted act and the final rights over the film still lies with the copyright owner. Hence, for instance, the persons hiring the film may have only limited broadcasting rights. To further sell or hire the film to others, they may have to get prior permission from the original copyright owner.
- **Synchronization Rights:** This is the right to synchronize the performance of a sound recording in a specific way with visual images. Synchronization rights are important in the use of songs and sound recordings on TV shows, in movies, or other types of motion picture and video media.

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- **Derivative Works Rights:** The derivative works right is the right to take an original song or sound recording and make alterations to it. Such as a right to alter a song by writing new lyrics for it or alter a sound recording by mixing in additional instruments or incorporating it into a medley.
- **Right to Communicate the work to public or Broadcasting Rights:** This is a right enjoyed by the owner whereby he can sell or assign the cinematograph film to broadcasting or a cable network. This right can subsist with the broadcasting channel for a period of 25 years, unless otherwise specified in the agreement, once the permit is given by the owner of the film.
- **Right to Adaptation and Translation:** It is an exclusive right to have the film adapted into another film or translated in any other language and re- release it.
- **Display Rights:** This right refers to the right to display a song publicly. This is a right encountered less frequently than the others, but would become an issue if someone wanted to display a song in let's say some fashion program (e.g. put the lyrics for a song in their store window). There have been constant efforts from the government today towards regularising the legal system with regard to the film industry. The Ministry of Information and Broadcasting ("MIB") is the governmental body that is involved in forming the rules and the regulations regarding films in India. The most important wing with regard to the film industry is the Central Board of Film Certification ("CBFC"), this facet of a certification of a film is covered under the Cinematograph Act, 1952. Any completed film which is to be exhibited has to obtain certification from CBFC.

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